

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No. : 09/967,171 Confirmation No.: 5990  
Applicant : Fluhr et al.  
Filed : September 27, 2001  
Art Unit : 3692  
Examiner : Graham, Clement B.  
  
Docket No. : 1101P548US1

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

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Applicants have carefully reviewed and considered the Final Office Action mailed on June 20, 2007 and the cited references. In response to the Final Office Action, Applicants respectfully request review prior to the filing of an Appeal Brief.

**Claim Rejections – 35 USC §103(a)**

Claims 1-43 are pending in the present application.

Claims 1-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number (USPN) 5,987,429 to Martzen (“Martzen”). Claims 36-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 6,873,969 to Stone et al. (“Stone”). Applicants respectfully traverse these rejections.

### **REMARKS**

Independent claim 1 was amended to recite “wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.” Independent claim 12 was amended to recite “wherein shipping options are automatically provided as a function of shipping logistics associated with certain goods.” Independent claim 25 was amended to recite “wherein said logistics are provided to said seller and said buyer via an automated system wherein identities of said seller and said buyer are maintained confidential from one another.”

Regarding claims 1, 12, and 25, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Martzen to include wherein said shipping logistics include automated variation of delivery options as a function of time period associated with said goods and a geography based consideration. The rationale set forth in the Office Action for modifying Martzen is to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.

As correctly noted in the Office Action, Martzen fails to explicitly teach “wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration,” recited in independent claim 1. While Martzen is directed to tracking multiple phases of an electronic transaction, such as shopping, purchase, warehousing, shipping and delivery, Martzen clearly does not teach or suggest a system to provide financial logistics and shipping logistics for completing a sale of goods without requiring interaction between a buyer and a seller.

Further, although the portion of Martzen cited by the Examiner (i.e., column 5, lines 37-61) does disclose “The shipping/delivery information object includes method of shipment, name of one or more shippers, transit locations of shipment,” there is no teaching or suggestion in Martzen to provide shipping logistics, wherein said shipping logistics include automated variation of delivery options. And, there is clearly no teaching or suggestion in Martzen to provide shipping logistics, wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Applicants also submit that Martzen fails to teach or suggest, either expressly or impliedly, the desirability of making the alleged modification to arrive at such feature. Although the portion of Martzen cited by the Examiner (i.e., column 5, lines 37-61) does disclose “The shipping/delivery information object includes method of shipment, name of one or more shippers, transit locations of shipment,” there is no express or implied suggestion in Martzen to include shipping logistics, wherein said shipping logistics include automated variation of delivery options. And, there is clearly no express or implied suggestion in Martzen to include shipping logistics, wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Nevertheless, the Examiner alleges that it would have been obvious to modify Martzen to include the missing language of claim 1 in order to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs. Applicant submits that this rationale set forth in the Office Action is unsupported and insufficient to establish obviousness with respect to independent claim 1. Namely, Martzen fails to teach or suggest, either expressly or impliedly, the desirability of providing a customer with shipping or delivery options so that they may choose the option based on their shipping needs. And, even assuming that Martzen could be modified to include shipping or delivery options, which Applicants do not admit, there would still be no teaching or suggestion to provide shipping logistics that include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Without proper motivation to modify Martzen to arrive at invention of independent claim 1, the rejection based on obviousness is improper. The motivation to make the alleged modification must be found either in Martzen or in the knowledge generally available to a person of ordinary skill in the art. Here, the Office Action does not adequately support its conclusion of obviousness and fails to present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the features of claim 1 to have been obvious in view of the teachings of Martzen. Rather, the Office Action merely concludes that it would have been obvious to modify Martzen to include the missing claim language. This line of reasoning to provide customers with shipping or delivery options so that customers may choose the option based on their shipping needs is circular, unsupported, and based on impermissible hindsight.

Applicants submit that dependent claims 2-11 are allowable by virtue of their dependency from independent claim 1 for at least the reasons discussed above. In addition, Applicants submit that grounds of rejection provided by the Office Action are insufficient to render claims 2-11 unpatentable on their merits. To support the rejection of dependent claim 2-11, the Office Action cites Martzen at column 1, lines 56-67, column 2, lines 1-67, and columns 3-8 lines 1-67. It is noted that the cited portions amount to practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 2-11.

Regarding claim 12, Applicants submit that the Office Action does not adequately support its conclusion of obviousness for at least the reasons given above with respect to independent claim 1. Additionally, it is pointed out that independent claim 12 recites among its other elements, "wherein shipping options are automatically provided as a function of shipping logistics associated with certain goods." As such, Applicants submits that the grounds of rejection in the Office Action do not properly address the features of independent claim 12.

Applicants submit that dependent claims 13-24 are allowable by virtue of their dependency from independent claim 12 for at least the reasons discussed above. In addition, Applicants submit that the grounds of rejection provided by the Office Action are insufficient to render claims 13-24 unpatentable on their merits. To support the rejection of dependent claim 13-24, the Office Action again cites practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 13-24.

Regarding claim 25, Applicants submit that the Office Action does not adequately support its conclusion of obviousness for at least the reasons given above with respect to independent claim 1. Additionally, it is pointed out that independent claim 25 recites among its other elements, "wherein said logistics are provided to said seller and said buyer via an automated system wherein identities of said seller and said buyer are maintained confidential from one another." As such Applicants submits that grounds of rejection in the Office Action do not properly address the features of independent claim 25.

Applicants submit that dependent claims 26-35 are allowable by virtue of their dependency from independent claim 25 for at least the reasons discussed above. In addition, Applicants submit that the grounds of rejection provided by the Office Action are insufficient to

render claims 26-35 unpatentable on their merits. To support the rejection of dependent claim 26-35, the Office Action again cites practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 26-35.

Independent claim 36 recites "arranging for a courier to receive said at least one event ticket from said seller and deliver said at least one event ticket to said buyer, according to said selected shipping option." Applicants submit that grounds of rejection in the Office Action do not properly address at least this feature of independent claim 36. For example, Stone is directed to electronic or virtual delivery options and does not teach or suggest arranging for a carrier.

Independent claim 40 recites "providing an interactive page on said Web site which automatically displays all events remaining in said season ticket package to said seller." Applicants submit that grounds of rejection in the Office Action do not properly address at least this feature of independent claim 40. Namely, Stone fails to teach or suggest interactive web pages for season tickets.

Applicants submit that dependent claims 37-39 and 41-43 are allowable by virtue of their dependency from independent claim 36 for at least the reasons discussed above. In addition, Applicants submit that the blanket grounds of rejection provided by the Office Action which cite column 5, lines 13-67 and column 13, lines 65-67 and column 16-47 lines 1-67 and column 60, lines 30-63 are insufficient to render claims 37-39 and 41-43 unpatentable on their merits.

Respectfully submitted,  
KACVINSKY LLC



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Robert V. Racunas, Reg. No. 43,027  
Under 37 CFR 1.34(a)

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